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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,194

05/23/2006

Karl Kuhmann

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12/23/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

12/23/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/580,194</p>	<p><b>Applicant(s)</b> KUHMAN ET AL.</p>	
	<p><b>Examiner</b> WALTER B. AUGHENBAUGH</p>	<p><b>Art Unit</b> 1794</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 105007 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-13.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794

Continuation of 3. NOTE: the amendments in claim 1 (to include the limitations of claims 9 and 10) present new issues that require further consideration and/or search because the combinations of limitations of claim 1 as amended after-final (including the limitations of claims 9 and 10) and each dependent claim were not considered prior to the after-final amendment. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 1-5 and 12 depend upon entry of the after-final amendment, which has not been entered for the reason provided above. Examiner notes that although Pflegger (the primary reference) does not explicitly teach a propene-ethene block copolymer, Pflegger does teach copolyolefins (col. 2, lines 7-12), and propene-ethene block copolymers fall within the scope of a teaching of copolyolefins.

Applicant's arguments regarding the rejections of claims 6-8 depend upon entry of the after-final amendment, which has not been entered for the reason provided above.

Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 9-11 have been fully considered but are not persuasive. Applicant argues that the copolymer taught by Johoji at col. 14, line 52-col. 15, line 3 is an additive, and therefore cannot be a "polyolefin molding composition" as claimed, but since the copolymer is present in an amount of from 1 to 99% by weight (col. 13, lines 29-39), the copolymer is not limited to being an additive (for example, if the copolymer is 95% of a blend, the copolymer is not an additive of the blend). In regard to Applicant's argument regarding the teaching of Pflegger at col. 1, lines 54-55 that the "tube should include an 'internal layer inert to the conveyed medium'", the copolyolefin taught by Pflegger is a suitable material for the internal layer of the tube (col. 2, lines 14-19). Examiner also notes that an amount of ethene in the copolymer taught by Johoji of 5 to 20% falls within the scope of the teaching of Johoji since Johoji teach that copolymer-1 should have no more than 5.0% ethene and that copolymer-2 should have no less than 7.0% ethene for the block copolymer to function suitably in accordance with the goals of Johoji, where the ratio of copolymer-1 to copolymer-2 is from 30/70 to 90/10 (col. 15, lines 4-16). -WA